

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
FITE DEVELOPMENT CO. for Review of)
the Final Decision of the Division)
of Water Quality. Our File No. G-57.)

Order No. WQG 82-4

BY THE BOARD:

On May 26, 1981, the State Water Resources Control Board (State Board) received a petition by Fite Development Company (Fite) for State Board review of a final decision by the Division of Water Quality. The decision in question determined that it would be inappropriate for the State Board to compel the City of Stockton to provide sewage treatment capacity for an industrial park proposed by Fite.

On December 9, 1981, a hearing was held to allow interested persons to present oral argument and documentary evidence regarding the issues.

I. BACKGROUND

Fite owns a 193-acre parcel of land located at the intersection of Arch Road and State Route 99 in the County of San Joaquin. The parcel is situated outside of the jurisdictional limits of the City of Stockton but is within the City's "sphere

of influence"^{1/} as determined by the Local Agency Formation Commission of San Joaquin County. The Fite property is, therefore, included in the City's general planning area.^{2/} The City's General Plan, which was adopted on December 11, 1978, designates the property as Open-Space and Agricultural.

San Joaquin County, on the other hand, has designated the Fite property as Restricted Light Industrial and Highway Services in its General Plan.^{3/} The County has also zoned the property in accordance with this designation. On April 12, 1979, the County approved, subject to certain conditions, a tentative parcel map for a 56-lot industrial park proposed by Fite. Condition No. 6, in particular, required that the sewage disposal system for the industrial park be connected to the City of Stockton's sewage treatment facilities.

The developer subsequently requested that the City approve the connection of the proposed development to the City's sewer system. The request was denied on the ground that the

1. A "sphere of influence" is defined as "a plan for the probable ultimate physical boundaries and service area of a local governmental agency." Govt. Code Section 54774.

2. In this regard, Government Code Section 65300 provides:

"Each planning agency shall prepare and the legislative body of each county and city shall adopt a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning." (Emphasis added.)

3. Although the City and County have generally been successful in resolving inconsistencies between their respective General Plans, the Fite property is one of the few remaining areas of disagreement. The County amended its General Plan on March 4, 1975, at the request of Fite and over the City's objections, to change the Fite property designation from Agricultural to Restricted Light Industrial and Highway Services.

proposed industrial park did not conform to the City's General Plan. Efforts by Fite to have the City's General Plan amended and the Fite property annexed to the City were unsuccessful.

In February 1981, Fite sought the assistance of the Division of Water Quality in its dispute with the City over use of Stockton's wastewater treatment facilities. Fite requested a determination by the Division that Stockton had violated the terms of its grant agreements with the State under the Clean Water Grants Program.^{4/}

The City of Stockton has received two grants, under the Clean Water Grants Program, for the construction of improvements and expansion of the City's Main Treatment Plant. On September 19, 1972, the City entered into a Step 3 grant agreement with the Environmental Protection Agency for the purpose of constructing modifications to the plant, and on October 5, 1972, the City entered into a similar agreement with the State of California.^{5/} On August 29, 1973, a second grant agreement was executed between the City and the State, for the construction of tertiary treatment facilities.^{6/} Each grant agreement with the State contained the following provision:^{7/}

"The Municipality shall provide regional treatment capacity in the proposed facilities and furnish services to area dischargers of wastewater based on fair and equitable conditions."

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4. See Title II of the Clean Water Act, 33 USC §§1281-1297; Water Code §§13600-13612; 13955-13998.
 5. C-06-0695.
 6. C-06-0767.
 7. "Exhibit B, Special Conditions" of each grant agreement.

Fite contended that the City's refusal to serve its development violated the above provision. On May 18, 1981, the Division issued its final decision denying Fite's request for a determination that the City had breached its contractual obligations with the State.

II. CONTENTIONS AND FINDINGS

Fite contends that the City's refusal to serve the proposed development violates the provision of the City's grant contracts with the State, which requires that the City provide regional treatment capacity in its sewer facilities on a fair and equitable basis. More particularly, Fite maintains that the City's position that the proposed use of the Fite property must conform with the City's General Plan as a condition of providing sewer service is unfair and inequitable. Fite contends that the City is inappropriately attempting, through its role as administrator of the regional treatment plant, to control development outside of its jurisdictional boundaries.

Fite further contends that the City's refusal to serve the development conflicts with the goals of the Clean Water Act.^{8/} Fite asserts that the City's action will not deter development, but rather will result in the use of inferior septic systems, which may cause water quality degradation.

The City, on the other hand, responds that Fite lacks standing to appeal the final decision of the Division of Water Quality. In addition, the City contends that it has fully complied with the contractual provision in question, and that

8. 33 U.S.C. Sections 1251 et seq.

the City's requirement that properties to be served by the City's sewer facilities conform to the City's General Plan is fair and equitable. The City further contends that it would, in fact, be illegal for the City to extend sewer services to the Fite property, given that the proposed use is inconsistent with the City's General Plan.

A. Standing

The City cites Section 3132 of the State Board's grant regulations^{9/} in support of its position that Fite lacks standing to appeal. This section authorizes "[a]ny applicant,^{10/} grantee,^{11/} or participating municipality"^{12/} to request a final division decision regarding matters in dispute over which the division has authority to take discretionary action. The final division decision can then be appealed to the State Board.

Fite is neither an applicant, grantee, or a participating municipality in the Clean Water Grants program. Consequently, the City is correct in its contention that Fite lacks

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9. Title 23 of the California Administrative Code.
 10. An "applicant" means a municipality which has applied for a grant. (23 C.A.C. §2103(a).)
 11. A "grantee" means an applicant who has executed a grant contract or grant agreement. (23 C.A.C. §2103(m).)
 12. A "municipality" is defined as "[a] city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency under section 208 of the [Clean Water] Act." (40 CFR §35.905.)

standing to appeal under Section 3132. The State Board, however, clearly has authority to consider Fite's appeal. Water Code Sections 179.6 and 183 empower the Board to hold any hearings and conduct any investigations over matters within the scope of the powers and duties of the Board. Therefore, the Fite appeal is properly before the Board.

B. Fair and Equitable Clause

None of the parties to this appeal dispute the fact that the City has operated its Main Treatment Plant as a "regional" facility, as required by the City's grant contracts with the State. The City has consolidated six separate facilities into one regional treatment plant. In addition, the City has followed a policy of serving all properties within its general planning area, which request such service and whose land use is consistent with the City's General Plan, even though the properties are outside city limits.

It is also undisputed that the City's Main Treatment Plant has adequate capacity to serve the Fite development. The only real issue is whether the City's refusal to serve the Fite property, because the proposed use is inconsistent with the City's General Plan, violates the grant contract requirement that the City provide service to area dischargers on a fair and equitable basis. We are unable to conclude that it does.

Fite contends that the fair and equitable provision in the City's grant contracts must be construed in accordance with the "Guidelines for Administering 'Fair and Equitable'

Clause Contained in Clean Water Grant Contracts", ^{13/}(Guidelines) adopted by the State Board on November 1, 1973. We do not agree that the City's refusal to serve can be said to violate the Guidelines for two reasons. First, the Guidelines were adopted by the State Board after execution of Stockton's grant contracts with the State. Therefore, the City is not bound by them. ^{14/}

Secondly, even assuming that the Guidelines did apply to the City's grant contracts with the State, we have concluded that the Guidelines do not address the case under consideration. In 1973 when the Guidelines were adopted by the State Board, the Board followed a policy of encouraging and requiring regionalization and consolidation of wastewater treatment facilities "where such regionalization or consolidation would result in a more efficient and economical solution to local problems." ^{15/}The Board found, however, that the concept of regionalization was impeded, in some cases, by the conduct of the entity selected as the regional agency. This conduct might consist of seeking to impose either unreasonable costs or inequitable conditions upon other local entities or areas to be served by the regional facilities. The guidelines attempted to address these two areas of concern.

13. App. B. to "Revenue Program Guidelines for Wastewater Agencies."

14. Cf. Swenson v. File, 3 Cal.3d 389, 393, 90 C.R. 580, 475 P.2d 852 (1970).

15. P. 1 of the Guidelines.

With respect to the reasonableness of conditions imposed on incoming entities or areas, the guidelines provide:

"Conditions for Service. Incoming agencies and areas shall be subjected to conditions which are reasonably related to and necessary for maintenance of the integrity and treatment capacity of the regional facilities. For example, the following types of conditions will ordinarily be considered appropriate:

1. Conditions which limit flows from the incoming agency or area to that flow allocated to this agency or area as a part of grant funding.
2. Conditions requiring adequate maintenance of the collection system of the incoming agency or area.
3. Conditions which require the incoming agency or area to adopt and implement necessary source control or industrial pretreatment program.

Conditions which interfere with the jurisdiction and authority of the incoming agency or area, except as necessary to maintenance of the integrity and treatment capacity of the regional facilities are improper."^{16/} (Emphasis added.)

Fite relies on the latter sentence to support its contention that the City's action is improper.^{17/}

We note, however, that in this case both the City and the County have planning authority and responsibility over the Fite property. As indicated previously, the property is within the City's sphere of influence and is also within County boundaries. We find that the Guidelines do not address the situation in which two agencies with concurrent planning

16. P. 3 of the Guidelines.

17. We note that the County, in its letter dated April 8, 1981, to the State Board, did not argue that the City's action unfairly interferes with the County's jurisdiction.

authority are in dispute as to the appropriate land use designation for that area.

Having concluded that the Guidelines are inapplicable to this case, the Board is unable to find that the City has otherwise violated the fair and equitable clause in its State grant contracts. The Fite property is in extremely close proximity to the City and is within the City's sphere of influence. It is not illogical to assume that in the ordinary course of events the property in question would be annexed to the City since it is within the City's sphere of influence. Certainly, under the circumstances of this case, the City has a very legitimate interest in the manner in which the property is developed, and we are not prepared to say that the City's refusal to serve is either unfair or inequitable.

With respect to Fite's second contention, that a refusal to serve is incompatible with the goals of the Clean Water Act, we have two observations. First, the property will not be developed in a manner which will degrade water quality. We certainly do not expect that the County would permit a disposal system which would degrade water quality, and we know that the Central Valley Regional Water Quality Control Board would not permit a disposal system resulting in water quality degradation. Second, the problem at hand basically involves local land use planning decisions. It was certainly not one of the goals of the Clean Water Act to interfere with local land use planning decisions absent some clear and critical water

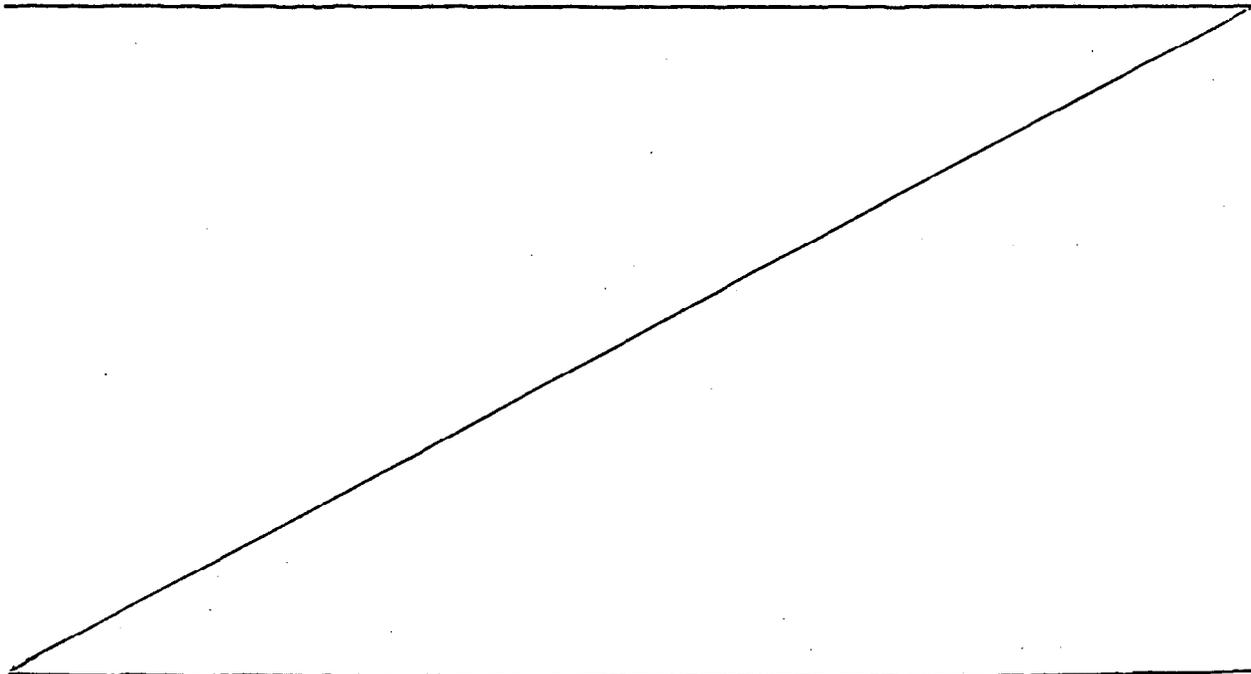
quality concern. It is also not our intent to unduly interfere in matters which primarily involve local planning decisions, unless water quality concerns leave us no choice.

IV. CONCLUSIONS

1. Although Fite lacks standing under State Board grant regulations to appeal the final division decision in this matter, the State Board is authorized by statute to consider Fite's appeal.

2. The City's refusal to provide service to Fite on the ground that the proposed land use is inconsistent with the City's General Plan does not violate the provision in the City's grant agreements with the State that requires that the City provide service to area dischargers on a fair and equitable basis.

3. The City's refusal to provide service to Fite is not inconsistent with the goals of the Clean Water Act.



V. ORDER

IT IS HEREBY ORDERED that the petition of Fite be denied.

DATED: May 20, 1982

/s/ Carla M. Bard
Carla M. Bard, Chairwoman

/s/ L. L. Mitchell
L. L. Mitchell, Vice-Chairman

/s/ Jill B. Dunlap
Jill B. Dunlap, Member

ABSENT
F. K. Aljibury, Member

